From: LERS, EOIR (EOIR)
To: All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); Stutman, Robin M. (EOIR); BIA ATTORNEYS (EOIR); All of OCIJ JLC (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); King, Jean (EOIR); Alder Reid, Lauren (EOIR); Berkeley, Nathan (EOIR); Korniluk, Artur (EOIR); Cowles, Jon (EOIR); Bauder, Melissa (EOIR); Vayo, Elizabeth (EOIR); Kaplan, Matthew (EOIR); Lang, Steven (EOIR); Ramirez, Sergio (EOIR); Powell, Karen B. (EOIR); Taufa, Elizabeth (EOIR); Lovejoy, Erin (EOIR); Rodriguez, Bernardo (EOIR); Brazill, Caitlin (EOIR); Wilson, Amelia (EOIR); Sheehey, Kate (EOIR)
Cc: McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); EOIR Library (EOIR); Moutinho, Deborah (EOIR); LERS, EOIR (EOIR)
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EXECUTIVE OFFICE FOR
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Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
February 23, 2018

Federal Agencies

DOJ

- BIA Issues Decision in Matter of Mendez — EOIR

  27 I&N Dec. 219 (BIA 2018)

  Misprision of felony in violation of 18 U.S.C. § 4 (2006) is categorically a crime involving moral turpitude. Matter of Robles, 24 I&N Dec. 22 (BIA 2006), reaffirmed. Robles Urrea v. Holder, 678 F.3d 702 (9th Cir. 2012), followed in jurisdiction only.

- BIA Issues Decision in Matter of J-C-H-F- — EOIR

  27 I&N Dec. 211 (BIA 2018)

  When deciding whether to consider a border or airport interview in making a credibility determination, an Immigration Judge should assess the accuracy and reliability of the interview based on the totality of the circumstances, rather than relying on any one factor among a list or mandated set of inquiries.

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- USCIS Issues PM-602-0134.1 on Signature Requirements for Submissions to the Agency

  The policy memorandum states that petitioners and applicants who are seeking immigration benefits are required to provide a valid signature on forms submitted to the agency, and that signatures pursuant to a power of attorney generally will no longer be accepted. The policy is effective March 17, 2018.

HHS

- Notice of Intent to Issue $15,000,000 Supplement to BCFS Health and Human Services-San Antonio

  Notice was published in the federal register on February 22, 2018, that the Office of Refugee Resettlement (ORR) intends to issue a supplement under the Standing Announcement for Residential (Shelter) Services for Unaccompanied Children. "ORR has been identifying additional capacity to provide shelter for potential increases in apprehensions of Unaccompanied Alien Children at the U.S. Southern Border. . . . To

ensure sufficient capacity to provide shelter to unaccompanied children referred to HHS, BCFS proposed to provide ORR with 450 beds in an expedited manner."

Supreme Court

CERT. DENIED

- Medina-Leon v. Sessions

  No. 17-876, 2018 WL 942511 (U.S. Feb. 20, 2018)

  Questions Presented: 1) Whether the U.S. Supreme Court precedent in [Holland v. Florida, 130 S. Ct. 2549 (2010),] precludes the Fifth Circuit Court of Appeals from adopting a rigid, inflexible standard for assessing equitable tolling requests in immigration cases because, as Holland, 560 U.S. at 650, provides, the "exercise of a court's equity powers . . . must be made on a case-by-case basis," and "'flexibility' . . . enables courts 'to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices;'" 2) Whether the Fifth Circuit Court of Appeals erred, as a matter of law, in applying a stringent rule for measuring due diligence for equitable tolling purposes, despite its own precedential decision in [Lugo-Resendez v. Lynch, 831 F.3d 337 (5th Cir. 2016)], where it held that the inquiry of whether equitable tolling is appropriate does not involve bright-line rules and must be evaluated based on the individual facts and circumstances of each case.

- Vasquez-Ramirez v. Sessions

  No. 17-873, 2018 WL 942509 (U.S. Feb. 20, 2018)

  Questions Presented: 1) Whether the Petitioner is eligible to apply for the protection of Political Asylum where it offers permanent protection, which is more than the temporary protection of Withholding of Removal that he is also seeking, and which is allowed despite his reinstated order of removal; 2) Whether the Asylum provisions of Section 208 of the Immigration and Nationality Act are determinative in cases of reinstated deportation orders under 8 U.S.C. § 1231(a)(5), such that the protection of Political Asylum is available even to those who re-entered the United States after removal.

- Tarango v. Sessions

  No. 17-810, 2018 WL 942482 (U.S. Feb. 20, 2018)

  Questions Presented: 1) Whether the U.S. Supreme Court precedential decisions in Heckler v. Chaney, 470 U.S. 821 (1985), Kucana v. Holder, 558 U.S. 233 (2010), and Mata v. Lynch, 135 S. Ct. 2150 (2015), provide substantial authority that federal judicial review of sua sponte motions to reopen is available, because discretionary restrictions to such review are only articulated in the Agency regulations and are not expressly precluded by Congress via statute; 2) Whether the Fifth Circuit Court of Appeals erred in holding that it has no jurisdiction to review Agency decisions of the Immigration Judge and of the Board of Immigration Appeals to reopen a case sua sponte under 8 C.F.R. §§ 1003.2(a) and 1003.23(b)(1), because such decisions provide no legal standard by which to judge those decisions, even though the Board of Immigration Appeals itself has outlined the criteria for such review under its "exceptional circumstances" standard.

- Silais v. Sessions

  No. 17-469, 2018 WL 942440 (U.S. Feb. 20, 2018)

  Question Presented: Whether Section 101(a)(3)(B)(ii) of the REAL ID Act, Pub. L. 109-13, 119 Stat. 302 (2005), requires that an Immigration Judge (IJ) give an asylum applicant notice that the IJ deems additional corroboration necessary and a reasonable opportunity to present it before denying his or her case based on a lack of corroboration as the Third and Ninth Circuits have held, or whether the contrary interpretation of the Sixth and Seventh Circuits is correct.

First Circuit

- Valerio-Ramirez v. Sessions

  Nos. 16-2272, 17-1402, 2018 WL 896714 (1st Cir. Feb. 15, 2018) (PSC)

  The First Circuit denied the PFR, concluding that the BIA did not commit legal error or abuse its discretion in applying the legal framework of Matter of Frentescu, 18 I&N Dec. 244 (BIA 1982), determining that the petitioner's conviction in violation of 18 U.S.C. § 1028A (aggravated identify theft) constituted a particularly serious crime that demonstrated she posed a threat to the community and rendered her ineligible for withholding of removal.

Fourth Circuit

- United States v. Smith

  No. 17-4015, 2018 WL 891278 (4th Cir. Feb. 15, 2018) (Crime of Violence)

  The Fourth Circuit affirmed the district court's judgment, concluding that the petitioner's conviction for North Carolina voluntary manslaughter is a violent felony under the force clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)), because the statute requires an intentional killing.

- Marube v. Sessions

  No. 17-1898, 2018 WL 922195 (4th Cir. Feb. 16, 2018) (unpublished) (Motion for a Continuance)

  The Fourth Circuit granted the PFR and remanded, concluding that the agency abused its discretion by failing to consider all of the factors required under Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009), in denying the alien's motion for a continuance. The court stated that the agency's denial of her motion was primarily based on the delay in the adjudication of the visa petition and on its determination that she did not have a current priority date that would allow her to adjust status if the visa petition were approved. The agency did not conduct any analysis as to the prima facie approvability of the visa petition or the alien's eligibility for AOS (beyond noting that her priority date was not current), and the court took judicial notice that her priority date was current at the time of the Board's decision. In addition, the court noted that the DHS did not explicitly object to her motion for a continuance, which she had requested due to the DHS's delay in adjudicating the visa petition filed on her behalf.

Ninth Circuit

- Gonzalez-Caraveo v. Sessions

  No. 14-72472, 2018 WL 846230 (9th Cir. Feb. 14, 2018) (Admin Closure; CAT)

  The Ninth Circuit denied the PFR, concluding that the petitioners were not prejudiced by the IJ's and the Board's error in failing to review their motion for administrative closure in accordance with Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012). The court joins the Fourth, Sixth, Seventh, and Eighth Circuits in holding that it has jurisdiction to review administrative closure decisions because the Avetisyan factors provide a "sufficiently meaningful standard" by which to evaluate agency decisions. Additionally, the court held that substantial evidence supported the agency's decision denying the petitioners' CAT claims.

- Rodriguez Tovar v. Sessions

  No. 14-73376, 2018 WL 846238 (9th Cir. Feb. 14, 2018) (Adjustment of Status; CSPA)

  The Ninth Circuit granted the PFR, rejected the Board's interpretation in Matter of Zamora-Molina, 25 I&N Dec. 606 (BIA 2011), of certain Child Status Protection Act (CSPA) provisions, and concluded that for purposes of section 201(f)(2) of the Act, the child's "age" is calculated according to section 203(h)(1) of the Act.

- Guardado-Sanchez v. Sessions

No. 16-70706, 2018 WL 991197 (9th Cir. Feb. 21, 2018) (unpublished) (MTR; NACARA)

The Ninth Circuit granted the PFR in part, concluding that the Board abused its discretion in denying the petitioner's motion to reopen to seek NACARA special rule cancellation of removal because the record contained documents that demonstrate he was prima facie eligible for NACARA relief.

- Anderson v. Sessions

  No. 14-73870, 2018 WL 991084 (9th Cir. Feb. 21, 2018) (unpublished) (Motion to Remand; Agg Fel)

  The Ninth Circuit granted the PFR in part and remanded to the Board to consider the petitioner's motion to remand in light of the court's decision in Sandoval v. Sessions, 866 F.3d 986 (9th Cir. 2017) (holding that a conviction under Or. Rev. Stat. § 475.992(1)(a) (delivery of a controlled substance) categorically did not qualify as an aggravated felony).